Supreme Court, U.S.
FILED
MAR 24 1992
OFFICE OF THE CLERK

NO. 91-1413

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

EDDIE THOMPSON, Jr.,
Petitioner-Plaintiff,

vs.

CITY OF COVINGTON, JOSEPH CONDIT,
HOWARD HODGE,
Respondents-Defendants.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

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Joseph Condit, Howard Hodge and the City of Covington, Kentucky respectfully present the Court with their brief in opposition to the petition of Eddie Thompson, Jr., who seeks a review of a decision of the United States Court of Appeals for the Sixth Circuit, Civil Action No. 91-5590.

STATEMENT OF THE CASE

Eddie Thompson, Jr. filed a suit for money damages against the City of Covington, Joseph Condit, and Howard Hodge alleging a conspiracy to deprive one of his tenants of rental assistance. These acts supposedly occurred from December 1975 to August 1977. Thompson alleges that the city enacted an ordinance requiring him to add a fire escape

to rental property in order to avoid paying rental assistance to one of his tenants. In 1978 Thompson filed an action asserting these allegations in the United States District Court for the Eastern District of Kentucky. In 1986 he filed a state action in the Kenton Circuit Court on these same allegations. The state action was dismissed on the grounds of res judicata referring to the previous dismissal in the federal district court. Thompson's appeals were dismissed.

Trying again Thompson filed this action on September 14, 1990 alleging the same facts as previously pled. Condit, Hodge, and the City of Covington moved to dismiss on grounds of the statute of limitations and res judicata. The motion was granted on the issue of the statute of limitation. The ruling was affirmed on October 9, 1991 by the Sixth Circuit Court of Appeals, Cincinnati, Ohio.

The facts are in dispute despite the allegations of Thompson in his Petition for a Writ of Certiorari. Thompson filed a complaint alleging a civil rights conspiracy to deny him certain constitutionally protected rights. Before answering Condit, Hodge, and the City of Covington filed a Rule 12 motion to dismiss on the grounds of the statute of limitations and res judicata.

Defendants have not admitted a fifteen (15) year statute of limitations applied to Thompson's complaint and have not admitted "all of the allegations of the complaint" as Thompson has claimed in his "Statement of Facts".

SUMMARY OF THE ARGUMENT

THE COMPLAINT OF EDDIE THOMPSON, JR. WAS BARRED BY THE ONE YEAR STATUTE OF LIMITATIONS APPLICABLE TO CIVIL RIGHTS ACTIONS ARISING IN KENTUCKY.

"In *Owens* v. *Okure*, 109 S.Ct. 573 (1989), the United States Supreme Court held that the state law governing residual or general personal injury actions shall provide the statute of limitations for Section 1983 actions. The Sixth Circuit recently eliminated any confusion regarding the applicable Kentucky statute. 'Section 1983 actions in Kentucky are limited by the one year statute of limitations found in Section [K.R.S. 413.140 (1)(a).] *Collard* v. *Kentucky Bd. of Nursing*, 896 F2d 179, 182 (6th Cir. 1990)' " (see appellant's appendix page 8a).

ARGUMENT

It appears the "Summary of the Argument" is sufficient to state the "Argument". Thompson simply asks this Court to overrule *Owens* v. *Okure*, supra and *Collard* v. *Kentucky*, supra. He advances no cogent reasons to do so. If this case is not dismissed for reasons of limitations it will be dismissed on grounds of res judicata for it has been filed and dismissed in the Federal District Court in the late 1970's and filed and dismissed in the Kentucky Circuit Court in the 1980's. (see appellant's appendix page 22a).

CONCLUSION

The filing of this Petition for a Writ of Certiorari is, as has been the institution of the action and the appeal to the Sixth Circuit, a harrassing and frivolous exercise in litigation. It should be dismissed.

Respectfully submitted,

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